

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MAXWOOD MUSIC LIMITED,

Plaintiff,

vs.

DARON MALAKIAN, individually and  
doing business as MALAKIAN  
PUBLISHING, and SERJ TANKIAN,  
individually and doing business as  
SHATTERED MIRRORS PUBLISHING,

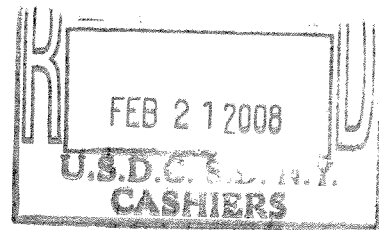
Defendants.

JUDGE SWEET

08 CV 1730

COMPLAINT

Jury Trial Demanded



Plaintiff Maxwood Music Limited ("Maxwood"), by its attorneys, Sonnenschein Nath & Rosenthal LLP, alleges for its complaint, upon knowledge with respect to its own acts and upon information and belief with respect to the acts of all others, as follows:

**Nature of the Action**

1. Maxwood is a music publisher that owns and controls certain publishing interests of the songwriter and recording artist Casey Chmielinski p/k/a Casey Chaos ("Chaos"). Maxwood seeks a declaratory judgment that it owns a fifty percent (50%) undivided interest in the hit song "B.Y.O.B." (the "Composition"), which was co-written by Chaos and Daron Malakian ("Malakian"), and recorded and released by System of a Down (a band of which Malakian is a member), on the multi-platinum full-length album, *Mezmerize* (the "Album").
2. Chaos and Malakian originally co-authored the Composition in or about March 2002 as part of a joint composing and recording project entitled "Scars On Broadway." At the time, Chaos and Malakian were each members of their own successful rock bands: Malakian was

a member of System of a Down and Chaos was a member of Amen. Malakian approached Chaos to collaborate on the joint side project; the two musicians subsequently co-wrote and recorded as demos approximately fourteen (14) songs together for the project, including the Composition.

3. The “Scars on Broadway” project was never commercially released, but Malakian later recorded the Composition with System of a Down, and released the track as the lead single from the Album in 2005 (the “Single”). Based in large part on the widespread popularity of the Single, the Album debuted at the number one position on the Billboard charts, and ultimately sold millions of copies worldwide. The band’s recording of the Composition also won a GRAMMY Award for “Best Hard Rock Performance” in 2005.

4. A copyright registration for the Composition -- which was filed with the Copyright Office in 2005 at Malakian’s direction by his own publishing company -- states explicitly that Chaos is a co-author. A true and correct copy of the copyright registration (PA 1-297-087) is annexed hereto as Exhibit A. The National Academy of Recording Arts and Sciences (“NARAS”) has also presented a certificate to Chaos “in recognition of [his] participation as a songwriter” on the GRAMMY Award-winning recording of the Composition. A true and correct copy of the NARAS certificate is annexed as Exhibit B.

5. In a wrongful attempt to hoard the revenue generated from the success of the Composition, however, Malakian now claims that the Composition was written solely by Malakian and the vocalist for System of a Down, Serj Tankian (“Tankian”), without any participation by Chaos. Malakian has not credited Chaos as a co-author in any promotional materials for the Single or in the liner notes of the Album, and Malakian has refused to account to Chaos for his equal ownership interest in the Composition.

6. As the owner of Chaos’ rights in and to the Composition, Maxwood therefore brings this action for judgment declaring its equal and undivided fifty percent (50%) ownership.

Maxwood also seeks an accounting of all income received by Defendants in connection with the Composition in order for Maxwood to determine the money owed to by virtue of its co-ownership.

### **The Parties**

7. Maxwood is a corporation duly organized and existing under the laws of the United Kingdom with its principal place of business at Regent House, 1 Pratt Mews London NW1 OAD, England. Maxwood is engaged in the business of music publishing, and owns and controls the rights in and to various musical compositions authored by Chaos.

8. Malakian is a songwriter and recording and performing artist residing in California, and is the guitar player for System of a Down. Malakian does business as Malakian Publishing in connection with his music publishing interests.

9. Tankian is a songwriter and recording and performing artist residing in California, and is the vocalist for System of a Down. Tankian does business as Shattered Mirrors Publishing in connection with his music publishing interests.

### **Jurisdiction and Venue**

10. Defendants have consented to the personal jurisdiction of this Court. Subject matter jurisdiction exists because Maxwood invokes a question of federal law by its request for a declaration of co-ownership under the United States Copyright Act, 17 U.S.C. § 101 et seq., and 28 U.S.C. § 2201. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 1400.

### Facts

#### Chaos and Malakian Write the Composition

11. Chaos is a songwriter and recording and performing artist. As the principal member of Amen, Chaos writes all of the band's music and lyrics, and performs virtually all of the band's vocals and instruments on studio recordings. Among other accolades, Amen was voted by the readers of the well-known music magazine *Metal Hammer Magazine* as "Overall Best Band in the World" and "Best Live Band in the World."

12. Chaos and Malakian first met while Amen and System of a Down were both performing on tour as part of the annual "Big Day Out" music festival in Australia. After telling Chaos about his enthusiasm for Amen's music, Malakian asked Chaos to collaborate on a side project. Soon thereafter, in March 2002, the two musicians commenced work on the side project at Malakian's home recording studio in Burbank, California.

13. Excited about the project, Malakian touted the collaboration to the press, emphasizing Chaos' unique musical contribution. For example, Malakian was quoted in the well-known British hard rock music magazine *Kerrang!* as saying: "You could say it's a little bit of both of our worlds coming together, with his rock edge and my eclectic edge . . . our worlds are different, but I thought they would make a good mix, which is why I approached him and asked him to do something. I wanted to stay away from System [of a Down]. It's a vision I have for this sound and I feel like a voice and a character like Casey's fits into the vibe really well. We don't have a name for it yet. Amen are an awesome punk rock band."

14. Jamming together with two guitars and a microphone, Malakian and Chaos co-wrote approximately fourteen (14) songs as part of what would ultimately be titled the "Scars On Broadway" project. At all times, Malakian and Chaos considered themselves the sole co-authors of "Scars On Broadway" and each of the individual compositions written for it, including the Composition, and intended that they be joint authors of those musical works. There was no

agreement between Malakian and Chaos that altered each co-author's equal and undivided copyright ownership interests in the project and the songs.

15. The Composition was one of the songs co-authored by Malakian and Chaos as part of the "Scars On Broadway" project. Based upon a guitar riff that Malakian had suggested, Chaos spontaneously created the lyric and vocal melody that would become the powerful chorus of the Composition: "Why don't presidents fight in the war? Why do they always send the poor?"

16. Following the politically confrontational theme of the chorus, Chaos wrote the remaining lyrics, including the phrases: "The population of barbarians, filled with their happy meals, victorious on pointed heels, lined up for their brand new spanking crashing deals"; "I'm marching forward into hypocrites, robotic and hypnotic into computers! You depend on our protection and make you feed on the lies, revection from the telethon;" and the cynical send-off "Everybody's at the party, dying in the desert, blowing up the sunshine."

17. After completing the Composition and the other songs from the project, Malakian and Chaos decided to rehearse the songs with a drummer. After some rehearsals, the three musicians went into a studio where rough versions of the songs were recorded. Unhappy with results of the recordings, however, Malakian and Chaos decided to put the project on hold while they each returned to their own music for their respective bands.

#### System of A Down Records and Releases The Composition

18. Following the "Scars On Broadway" writing and recording sessions, Chaos turned his attention to writing and recording new music for a new Amen album. Completed in early 2004, the Amen album was released by "EatURmusic," Malakian's newly formed imprint record label with Columbia Records. Soon thereafter, Chaos embarked on a tour with Amen in England.

19. While Chaos returned to Amen, System of a Down apparently entered into the recording studio to record the Album. Unbeknownst to Chaos, the Composition was one of the songs recorded by the band. The System of a Down recording of the Composition was more commercial and radio-friendly than the version recorded by Malakian and Chaos.

20. Recognizing the potential for a hit, System of a Down released the recording of the new arrangement as a lead single to the Album (the "Single"), delivering promotional copies to radio stations and selling the Single on the web via digital download and through traditional retail chains on compact disc. The Single became a big hit, reaching the fourth position on *Billboard's* Modern Rock Tracks and Mainstream Rock Tracks charts. Released in May 2005, the Album debuted at the number one position on the *Billboard* 200 chart, and ultimately sold millions of copies worldwide.

21. Chaos was not listed in the credits for the Single or the Album as a co-author of the Composition. Upon the release of the Album, however, Malakian's publishing company, Sony/ATV Songs LLC ("Sony"), filed a registration with the Copyright Office for the Composition that explicitly listed Chaos as an author together with Malakian. (*See Exhibit A.*) Without any approval from Chaos, the registration also listed System of a Down's vocalist, Tankian, as a purported third author.

22. Sony also registered Chaos as a co-author with the relevant public performance societies in the United States and United Kingdom that collect royalties for songwriters generated from public performances of their compositions. In the United States, Sony registered Chaos as a writer with Malakian's performance society, Broadcast Music Incorporated ("BMI"), and Chaos' own performance society, American Society of Composers, Authors and Publishers ("ASCAP"). In the United Kingdom, Sony registered Chaos as a writer with the public performance society that represents both writers, MCPS-PRS Alliance ("MCPS-PRS").



23. Despite the lack of any agreement between Malakian and Chaos altering their inherent equal and undivided ownership of the Composition, the registrations with the public performance societies originally wrongly listed Chaos' writer's share as a mere two percent (2%).

Malakian Purports to Refuse Chaos' Copyright Interest

24. On June 2, 2006, Chaos entered into a written publishing agreement with Maxwood. Under the terms of the agreement, Chaos assigned his copyright interest in various musical compositions to Maxwood, including the Composition.

25. On or about September 18, 2006, Maxwood's counsel wrote to Malakian's counsel to request a written confirmation of Chaos's equal fifty percent (50%) copyright interest in the Composition, together with a correction of the credits on the Single and the Album and a full accounting of the revenue earned. On or about September 27, 2006, Malakian's counsel responded by letter, rejecting the request and claiming that that Chaos "did not 'write' any of the song lyrics or music" and had "no ownership of the Copyright in the Composition."

26. Soon thereafter, in October 2006, Malakian purported to file a "supplemental registration" with the Copyright Office for the Composition (PA 1-365-145). A true and correct copy of the supplemental registration is annexed hereto as Exhibit C. The supplemental registration seeks to remove "Casey Cmielinski Pub. Designee" as a copyright claimant from the original copyright registration. Nevertheless, the supplemental registration does not change the listing of Chaos as a named author of the Composition.

27. Malakian's counsel sent the supplemental registration to Maxwood's counsel by letter dated April 5, 2007. In response, Maxwood filed its own copyright registration for the Composition (PA 1-332-095). A true and correct copy of this registration is annexed hereto as Exhibit D. Maxwood's registration sets forth the accurate information for the Composition,

including an accurate listing of Malakian and Chaos as the only two co-authors, and their respective publishing companies, Maxwood and Sony, as the copyright claimants.

MCPS-PRS Resolves The Dispute In Favor Of Maxwood

28. Maxwood originally notified MCPS-PRS, BMI and ASCAP in or about September 2006 that the two percent (2%) registration for Chaos's writer's share in the Composition was incorrect, and that the proper percentage was fifty percent (50%).

29. In response, MCPS-PRS initiated an internal procedure to determine the parties' proper interests. On or about November 20, 2006, MCPS-PRS concluded the procedure in favor of Maxwood. Although Maxwood has now started to receive some public performance royalties in the United Kingdom from MCPS-PRS based on its proper fifty (50%) copyright ownership, the royalties have been paid on a prospective basis, excluding payments for any royalties that accrued prior to the MCPS-PRS' resolution of the dispute in favor of Maxwood.

30. The resolution in the United Kingdom by MCPS-PRS does not affect the public performance royalties owed to Chaos and Maxwood for the territories outside the United Kingdom. The resolution also does not affect the (non-public performance related) publishing royalties owed to Maxwood from Sony's sales outside the United Kingdom of the Single or the Album or any other licenses of the Composition issued directly by Sony.

**FIRST CLAIM FOR RELIEF  
(Declaratory Judgment)**

31. Maxwood repeats and realleges each and every allegation set forth in paragraphs 1 through 30 as if fully set forth herein.

32. The Copyright Act, 17 U.S.C. §101 et seq., and 28 U.S.C. §2201, empowers this Court to declare the ownership rights of parties in and to musical compositions, and any such declaration shall have the force and effect of a final judgment.



33. Maxwood seeks a declaratory judgment that the Composition was co-authored by Chaos and Malakian, without the participation of any other party. Maxwood further seeks a declaration that, by virtue of Chaos' co-authorship, Chaos owned (and Maxwood now owns by virtue of an assignment) an equal and undivided fifty percent (50%) share of the Composition.

**SECOND CLAIM FOR RELIEF  
(Accounting)**

34. Maxwood repeats and realleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

35. By virtue of its ownership of an equal share of the Copyright in the Composition, Maxwood is entitled to an accounting by Defendants of all revenue earned from the Composition, pursuant to which Maxwood can determine the money rightfully belonging to it, and wrongfully withheld by Defendants.

WHEREFORE, Maxwood demands judgment against Defendants as follows:

- (a) A judgment declaring that Maxwood owns an equal and undivided fifty percent (50%) interest in the Copyright to the Composition;
- (b) An order requiring Defendants to submit to an accounting so that Maxwood may determine the amount of money it is owed by virtue of its ownership of an equal share of the Copyright in the Composition.

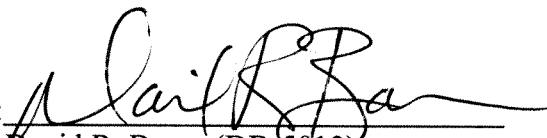
(b) Reasonable attorneys' fees, costs and expenses, and such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury.

Dated: New York, New York  
February 21, 2008

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